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Extraterritorial Human Rights Obligations from an African Perspective, Lilian Chenwi and Takele Soboka Bulto (eds) [Cambridge: Intersentia Ltd, 2018] xxxi + 275pp

Lilian Chenwi and Takele Soboka Bulto's edited collection, *Extraterritorial Human Rights Obligations from an African Perspective* (Intersentia 2018) provides a creative, far-reaching and invigorating account of the potential of extraterritorial human rights protection grounded in contemporary and prescient examples of extraterritorial violations of rights in the African context. The book provides arguably the most comprehensive account of extraterritoriality in the African context to date, building upon the excellent monograph of one of its editors, *The Extraterritorial Application of the Human Right to Water in Africa* (CUP 2014). The book is ambitious in its scope, ranging from issues relating to CIA extraordinary rendition, atrocities committed by the Lord's Resistance Army, Overseas Development Aid, and displacement due to climate change. Non-African states are held to account for failing to respect, protect, and fulfil human rights in Africa. The powerlessness, or complicity, of African states in these instances is exposed, and an explanation is provided of their obligations under the African Charter on Human and Peoples' Rights.

As a result of the fact that the book considers extraterritorial human rights obligations 'from an African perspective' and not just the obligations of African states, the extraterritorial affect of a range of international law sources are analysed. The book addresses the potential extraterritorial application of Maastricht Extraterritorial Obligations Principles, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, as well as regional human rights systems and the ICCPR and ICESCR.

The unique construction and background of the African Charter on Human and Peoples' Rights (African Charter) is always at the forefront of analysis and serves as a justification for a presumption of extraterritoriality. The editors in the introductory chapter note that the African perspective of human rights is based on the concept of collectivity<sup>1</sup> and extraterritorial human rights obligations are instrumental in operationalising cooperation.<sup>2</sup> Further, the African Charter does not contain a jurisdiction clause like many other human rights treaties, and therefore reads as though there is no territorial delimitation of its application.<sup>3</sup> Many of the substantive clauses unique to the African Charter imply no territorial delineation of obligations such as the right to 'freely dispose of their wealth and natural resources',<sup>4</sup> the possibility of criminal responsibility for transnational harm resulting from illicit exploitation of natural resources<sup>5</sup>, the right to non-discrimination,<sup>6</sup> the right to protect life vis-à-vis corporations domiciled in the territory or jurisdiction,<sup>7</sup> the right to international peace and security,<sup>8</sup> and the right to leave and return to your country of origin.<sup>9</sup>

The range of subject matter across each chapter is invariably one of the most exciting aspects of the book from an extraterritoriality perspective. Usually, accounts of extraterritoriality are syphoned into

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<sup>1</sup> Lilian Chenwi and Takele Soboka Bulto, *Extraterritorial Human Rights Obligations from an African Perspective* (Intersentia 2018) 17.

<sup>2</sup> Ibid 18.

<sup>3</sup> Ibid 20.

<sup>4</sup> Article 21(1) African Charter.

<sup>5</sup> Protocol on Amendments to the Protocol on the State of the African Court of Justice and Human Rights of 2014.

<sup>6</sup> Article 2 African Charter.

<sup>7</sup> African Commission, General Comment No 3, para 14: no territorial limitation on the protection of life under Article 4; African Commission, General Comment No 3, para 18.

<sup>8</sup> Article 23 African Charter.

<sup>9</sup> Article 12(2) African Charter.

civil and political rights books, and economic and social rights books, and some of this subject matter is not conceived in extraterritorial human rights terms at all, for example, the obligations of corporations are usually litigated in tort, and the extraterritorial influence of private actors on the right to education is underexamined. The other major strength of the book is how these diverse range of topics are methodologically linked, each adopting a firm structure around obligations 'to respect, protect, promote and fulfil rights',<sup>10</sup> each identifying the international framework pertaining to third party states and the territorial and extraterritorial obligations of African states under the African Charter when relevant.

One of the common arguments for curtailing extraterritorial human rights obligations in relation to Overseas Development Assistance, the right to food, and the right to water is that it places an onerous burden on the foreign state. This is exacerbated by the idea that there is no normative link or chain of attribution that can limit the extent to which states are expected to fulfil these rights in the extraterritorial context, thus opening up states to untenable obligations. A state should not have to assist another state just because it has more resources: there needs to be a reason why one foreign state is obligated to aid another state in need. Chapters considering aid and foreign investment are instructive in this regard. Their primary focus is on the obligation to 'respect' rather than 'fulfil', negative obligations to refrain from interfering with food, water, land, or education, rather than a positive obligation to spend resources on improving their extraterritorial provision.

Lilian Chenwi writes the chapter on overseas development assistance (ODA), defined as rich countries transferring money to poorer countries'.<sup>11</sup> She acknowledges that ODA fulfils an important role in 'facilitating development and enhancing human rights implementation'<sup>12</sup> but that it has the potential to hinder realisation of rights in the receiving state. She exposes the fact that many donor states and organisations (such as the World Bank and African Development Bank) use development assistance to further their own ends<sup>13</sup> to the detriment of inhabitants of recipient states. One example provided was Chinese assistance to Kenya for oil exploration and drilling. China was permitted to drill for oil on lands located in the centre of an indigenous community's territory, resulting in violations of the right to food and water, and forced evictions.<sup>14</sup> Nadia CS Lambek and Claire Debucquois, who consider the right to food in Africa, also place emphasis on the obligation to respect rather than protect or fulfil. They note that African countries are affected by agricultural subsidies in the Global North. These subsidies are aimed at supporting domestic production in the Global North. They distort international prices by flooding international markets with cheap goods having deleterious effects on African markets.<sup>15</sup> Transnational corporations operating under the regulations of one state but working in Africa can lead to evictions of farmers or 'convert agricultural land away from food production'.<sup>16</sup> They explicitly expose the tendency on the national level to focus on the obligation to fulfil, with minimal attention given to the obligations to respect and protect the right to food.<sup>17</sup> This has resulted in states being 'more prone to introducing social protection schemes to assist families, individuals and farmers

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<sup>10</sup> Chenwi and Bulto, *Extraterritorial Human Rights Obligations* (n 1) 23.

<sup>11</sup> *Ibid* 88.

<sup>12</sup> *Ibid* 89.

<sup>13</sup> *Ibid* 107.

<sup>14</sup> *Ibid* 114.

<sup>15</sup> *Ibid* 147.

<sup>16</sup> *Ibid* 134.

<sup>17</sup> *Ibid* 142.

by providing cash transfers, food to improve yields, rather than to regulate the private sector, foreign investments or the government'.<sup>18</sup>

Accountability for complicity of African states when non-African states commit human rights violations features throughout the edited collection. Christopher Mbazira considers land grabbing in Uganda, and in particular the *Mubende Case*.<sup>19</sup> The *Mubende* case involved the Neumann Kaffee Gruppe who wished to set up a commercial coffee farm in a village in the Mubende District in Uganda. The Resident District Commissioner of Mubende District facilitated the forced eviction of residents living there, employing soldiers to burn property and quell violence through killing and detention. There were alleged violations of the right to property, food, health and water. But the judge merely found liability on the part of the lawyers who advised the Uganda Investment Authority, the organisation that secured the investment from the German coffee company. No liability was found on the African state. Mbazira documents that Global North states are increasingly investing in land in African states as a stable commodity on the markets post the 2009 financial crisis, that African authorities use force to facilitate these investments, and that there needs to be greater human rights accountability. Fons Coomans exposes the negative impact that foreign private actors in the educational market can have on the right to education in targeted African countries. States provide financial support to the private parties or are the home state of companies providing the educational services abroad. He analyses the territorial obligations of African states in protecting against interference in education that leads to its privatisation and exclusion of certain groups.

Takele Soboka Bulto emphasises the difficulties in attribution when an African state is involved in a much more complex situation of rights violations. Extraordinary renditions involve 'the transfer of individuals without due legal processes – always without judicial approval, oversight or knowledge - into the hands of foreign governments, mostly the US'<sup>20</sup> resulting in torture and disappearances.<sup>21</sup> He acknowledges the pressure from the US to induce relatively weak African states to participate in the CIA extraordinary rendition programme. The attribution question is also central in the context of displacement resulting from climate change. Ademola Oluborode Jegede acknowledges the debate on causal effects of climate change and the argument that Global North state activity is not the main causal factor in rising temperatures, non-viability of land, or displacement of people. She argues that the displacement of indigenous communities can be partially attributed to states. A failure of states to acknowledge the plight of indigenous communities in national adaptation programmes of action under the UN Framework Convention on Climate Change means that indigenous communities may not have direct access to funds to help cope with the changing climate.<sup>22</sup> Further, state and non-state actors involved in biofuel deals in African states, as is required under the Kyoto Protocol, which promotes harnessing renewable sources of energy, results in displacement of indigenous communities.<sup>23</sup> Attribution, like the rules of extraterritoriality, are often used to evade accountability, and these chapters that consider its complexity are further examples of attempts to overcome the obstacles that have been erected to prevent operationalisation of human rights protection.

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<sup>18</sup> Ibid 143.

<sup>19</sup> Ibid 231.

<sup>20</sup> Ibid 183.

<sup>21</sup> Ibid 180.

<sup>22</sup> Ibid 212.

<sup>23</sup> Ibid 213-4.

Frans Viljoen, the Director of the Centre for Human Rights in the University of Pretoria, South Africa, states in the foreword that '[t]his is a book of promise'.<sup>24</sup> This African human rights scholarship is of global significance. It attempts to hold non-African states, as well as African states, to account. Crucially, it is exemplary in its attempts to shape the rules of extraterritoriality around human rights victims rather than state and non-state actors that rely on the legal vacuums created by this discipline to evade responsibility.

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<sup>24</sup> Ibid X.